Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Writ Petition (M/S) No. 2890 of 2001
Old CMWP No. 37020 of 2000

Bhim Dutta S/O Devi Dutta,
R/O village Selagarh, Post Kotkedri, Tehsil and
District Champawat.

…. **Petitioner.**

Versus

1. District Judge, Pithoragarh.
2. Prescribed Authority Lohaghat.
3. State of U.P. through District Magistrate.
4. Range Officer, Boom Range, District Champawat.
5. Forest Department through D.F.O. Pithoragarh at Champawat.
6. Zila Parishad, Champawat.

… **Respondents.**

Sri Lalit Sharma, Adv., learned counsel for the petitioner.
Sri M.S. Negi, learned Adv. General assisted by Sri Atul Bansal learned counsel for the respondents-State.

Dated May 25, 2006

PC: (Hon'ble B.S. Verma, J.)

By means of the present writ petition, the petitioner has challenged the order dated 21-2-2000 (Annexure No. 4 to the writ petition), passed by the District Judge Pithoragarh, whereby the Eviction Appeal preferred by petitioner Bhim Datt (Misc. Eviction Appeal No. 24 of 1999) against the State of U.P. under Section 9 of the U.P. Public Premises (Eviction of Unathorised Occupants) Act, 1972 (***for short the Act***) was dismissed by a common judgment deciding Eviction Appeal Nos. 20 of 1999, 21 of 1999, 22 of 1999, 23 of 1999, 24 of 1999 (present case), 25 of 1999 and 26 of 1999.

Relevant facts of the case were that the Prescribed Authority, being satisfied by the challani report submitted by Van Kshetra Adhikari (Forest Range Officer) Boom to the effect that the petitioner had encroached upon the public utility land of Khatauni

Khata Compartment No. 5 measuring plot no. 5, area 123 sq.mt., issued notice under Section 4 (1) of the Act to show cause as to why he be noted evicted from the State land. The petitioner resisted the notice and filed his written objection asserting that he had occupied the land in dipute since the year 1975 and he had been licensee of the Zila Parishad, whom the rental has been regularly paid by him and the land in dispute is not a public utility land under the provisions of the Act. Ultimately, the Prescribed Authority on the basis of evidence on record passed the impugned order dated 30-1-1999 for eviction of the petitioner from the land in question. Aggrieved, the petitioner filed an appeal before the District Judge, which too was dismissed, as mentioned above.

I have heard learned counsel for the parties and perused the material on record including the impugned order.

At the outset, it may be in the present case, the allegations against the petitioner was that he had encroached upon the land belonging to Forest Department. It is admitted to the petitioner that he had been in occupation of the land since the year 1975, though, according to the petitioner, he had been payment rental to Zila Parishad to show that he has been licensee of the land.

The important aspect of this case is that the petitioner has no where in his reply dated 20-8-1998 had denied that the land belongs to the Forest Department, though in the challani report and the notice issued under Section 4(1) of the Act by the Prescribed Authority, there had been specific allegation that the petitioner had encroached upon forest land and grounds for his eviction were mentioned in the notice as per requirement of law. On the other hand, from the own admission of the petitioner, he had occupied the disputed land. The notice under Section 4 (1) of the Act was not even challenged on the ground of its validity.

The petitioner even in the memo of writ petition has taken a stand in paragraph no. 7 that a large number of persons had constructed wooden shops and tin sheds by the side of the road, which goes from Thuligarh to Purnagiri Devi Temple and the Zila Parishad was charging rent from the shop-keepers. According to him, some times the rent was being charged as Mela Fare. This own admission, of the petitioner, in no way entitles him to occupy the forest land, which is covered in the definition clause of "premises" given under Section 2 (b) of the Act, which reads as under:-

"Premises" means any land including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road, or any building or part of a building and includes-

(i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building; and

(ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof;

but does not include land which for the time being is held by a tenure-holder under any law relating to land tenure."

For a just decision the relevant provision of Section 4 of the Act may be referred herein. Section 4 of the Act provides for issue of notice to show-cause against order of eviction and sub-section (1) reads that *"If the prescribed authority, either of its own motion or on an application or report received on behalf of the State Government or the corporate authority, is of opinion that any persons are in unauthorised occupation of any public premises and that they should be evicted, the prescribed authority shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show-cause why an order of eviction should not be made."*

Sub-section (2) provides that the notice shall- (a) specify the grounds on which the order of eviction is proposed to be made; and (b) require all persons concerned, that is to say, all

persons who are, or may be, in occupation of, or claim interest in, the public premises, to chow-cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

The contention of the learned counsel for the petitioner is that notice/challani report under Section 4(1) of the Act does not show the occupation of the petitioner as unauthorised. This contention of the learned counsel is misconceived. As mentioned earlier, in the *challani* report, the forest authorities have clearly mentioned that the petitioner had encroached upon forest –land and the *challani* report itself has been filed with the memo of writ petition, wherein the specific details of the illegal occupation of the petitioner were given. Therefore, it does not lie in the mouth of the petitioner that the authorities had not treated his occupation as illegal. No illegality could be pointed out in the notice under Section 4(1) of the Act.

From the copies of rental realized by Zila Parishad on whatsoever count do not make the occupation of the petitioner over the forest-land as legal. In the present proceedings for eviction, these documents do not help the petitioner in any manner.

From the discussion aforesaid, I find no perversity or illegality or any manifest error of law committed by the courts below and the courts below were fully justified in passing the impugned order and dismissing the appeal preferred by the petitioner. The writ petition is devoid of merit and is liable to be dismissed.

The writ petition is hereby dismissed. Costs easy.

(B.S. Verma. J.)

RCP